

Adz. n. a

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

May 15, 2006

OFFICE OF  
MANAGING DIRECTOR

Lawrence J. Bernard, Jr.  
Counsel for GSW, Inc., *et al*  
4501 Connecticut Avenue, N.W.  
Suite 315  
Washington, DC 20008

Re: GSW, Inc., *et al*  
Request for Extension of FY 2005  
Regulatory Fee Payment Deadline  
Fee Control No. RROG-06-00006993

Dear Mr. Bernard:

This responds to your petition on behalf of GSW, Inc., and eleven other entities (GSW, Inc., *et al*), licensees of 22 broadcast radio stations providing service to communities in Arkansas, Georgia, Louisiana, and Mississippi (six of which provide service to communities in southern Mississippi), requesting waiver of the penalty for late payment of the fiscal year (FY) 2005 regulatory fees. Our records show that the regulatory fees for all 22 stations were received on October 31, 2005 and November 15, 2005. We also have received two late penalty payments of \$288.75 for State Broadcasting, Inc., Gulfport, Mississippi, and \$780 for Southeastern Broadcasting, Inc., also of Gulfport. As explained below, we find that given the extraordinary efforts GSW's reduced staff made to maintain broadcast service during the period in question, it is appropriate to waive the late payment of the FY 2005 regulatory fees.

In your petition, you state that John M. Dowdy is an owner-principal of each of the licensees of the 22 broadcast stations at issue and that Mr. Dowdy supervises all responses to FCC mailings from his offices in Gulfport. You further state that Mr. Dowdy and his staff had begun preparation of responses to the Commission's fee notifications when Hurricane Katrina struck on August 28, 2005. As a result of the storm, Mr. Dowdy set aside his plans to submit payment for FY 2005 regulatory fees for all of the 22 stations in order to operate the stations and provide public service programming during the emergency. You state that Mr. Dowdy submitted the payments on October 28, 2005. You request that the penalties for late payment of the FY 2005 regulatory fees for these stations be waived because Mr. Dowdy's extraordinary efforts to provide public service programming throughout the emergency served the public interest and outweigh the inconvenience caused by late payment in this case.

In an attached certification, Mr. Dowdy asserts a number of supporting facts. First, he asserts that he has primary responsibility for overseeing the operation of the 22 stations. Next, Mr. Dowdy states that six of the 22 stations at issue are licensed to communities in southern Mississippi, which communities were severely damaged by hurricanes in August and September 2005. Mr. Dowdy states that he was able to operate all of his full-time stations continuously throughout Hurricane Katrina and its aftermath, when electric service was otherwise unavailable, because of his pre-Katrina \$80,000 investment in standby power generation equipment. Mr. Dowdy further states that the 20 full-time staff normally at his gulf coast stations were reduced to about five during the 30-day period following Katrina. In addition, Mr. Dowdy states that some of his staff who managed to get to the stations stayed 24 hours a day during the few weeks immediately following the storm, and that three staff members lived at station offices for more than 70 days. Moreover, Mr. Dowdy states that “[f]inding food, water, other supplies and fuel for the generators took hours of my time each day.”<sup>1</sup> Mr. Dowdy states that virtually all of the affected stations’ programming was related to the emergency. To that end, Mr. Dowdy used remote broadcast equipment and cell phones to stay in contact with all levels of government, whose officials broadcast live over the stations a number of times. Mr. Dowdy states that “[a]ll of [my and my greatly reduced staff’s] efforts were devoted to keeping the stations operating during the emergency” and that “normal administrative tasks were necessarily curtailed.”<sup>2</sup> Mr. Dowdy further states that he was unaware of the Commission’s extension of the deadline for payment of the FY 2005 regulatory fees, and did not submit payment for his stations until October 28, 2005, once normal day-to-day operations of the stations had resumed.

The Communications Act of 1934, as amended, requires the Commission to assess a late charge penalty of 25 percent on any regulatory fee not paid in a timely manner. *See* 47 U.S.C. § 159(c)(1). It is the obligation of the licensee responsible for regulatory fee payments to ensure that the Commission receives the fee payment no later than the final date on which regulatory fees are due for the year. *See* 47 C.F.R. § 1.1164.

In light of these strict requirements, the Commission will waive the late charge penalty only in the most extraordinary circumstances.<sup>3</sup> For instance, we have not imposed the late charge penalty in some instances in which we found that the untimely receipt (including beyond the deadline extended by the Commission) of the fee was the result of the clearly unforeseeable events of September 11, 2001, including the ensuing interruption of mail and air courier service.<sup>4</sup> On August 31, 2005, the Commission extended the payment deadline for those licensees and regulatees in the area affected by Hurricane Katrina from 11:59 p.m. September 7, 2005, to 11:59 p.m. September 28,

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<sup>1</sup> Dowdy Certification at 2, para. 3.

<sup>2</sup> Dowdy Certification at 3, para. 5.

<sup>3</sup> *See McLeodUSA Telecommunications Services, Inc.*, 19 FCC Rcd 6587, 6589 para. 8 (2004).


<sup>4</sup> *Id.*

2005.<sup>5</sup> For all others, *i.e.*, those not affected by the hurricane, the previously announced window remains in effect, and the Commission's rules concerning late payment or non-payment will be enforced.<sup>6</sup> Licensees and regulatees affected by the hurricane must include a certification that payment could not be made within the previous announced time because of the hurricane.<sup>7</sup>

As to Mr. Dowdy's 22 stations, our records show receipt of the FY 2005 regulatory fees on October 31 and November 15, 2005, in each case several weeks beyond the Commission's extended deadline of September 28, 2005. The information you submitted, however, relates extraordinary circumstances stemming from Hurricane Katrina that, due to the demands of operating the stations in extreme conditions, prevented the performance of normal business transactions such as fee payments by the extended deadline. Specifically, the fee payment paperwork for all 22 stations was located in the Gulfport, Mississippi offices when the storm struck and Mr. Dowdy, as the owner of the stations primarily responsible for supervising their operation and making the payments, was unable to submit them until normal operations had resumed due to his efforts to keep the stations in the area affected by the hurricane in operation. The late fee payments were not due to personal circumstances, but rather because Mr. Dowdy and his severely reduced staff devoted their time to providing broadcast service in the public interest to the stricken area for an extended period. Accordingly, we find that, in these unique circumstances, no late penalties are due.

Checks made payable to the maker of the original checks and drawn in the amounts of \$288.75 and \$780 will be sent to you at the earliest practicable time. If you have any questions concerning this matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,



 Mark Stephens  
Acting Chief Financial Officer

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<sup>5</sup> Public Notice, DA 05-2396, August 31, 2005.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

RECEIVED & INSPECTED

FEB - 8 2006

FO WAIVER TRACKING  
CNTL# 6993

Before the

FCC - MAILROOM

FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

~~RAO G-06-0000~~  
RAO G-06-00006993

In the Matter of

GSW, Inc. ✓	)	FRN No. 0005003553
JMD, Inc. ✓	)	FRN No. 0004073110
MAC Partners	)	FRN No. 0005003488 ✓
Dowdy & Dowdy Partnership	)	FRN No. 0004073128 ✓
Dowdy Partners	)	FRN No. 0005003538 ✓
Harrison Radio Stations, Inc.	)	FRN No. 0005003546 ✓
John M. Dowdy	)	FRN No. 0005008131 ✓
Mountain Home Radio Stations, Inc.	)	FRN No. 0005003470 ✓
San Dow Broadcasting, Inc.	)	FRN No. 0005003579 ✓
Southeastern Broadcasting, Inc.	)	FRN No. 0013324210 ✓
State Broadcasting, Inc.	)	FRN No. 0005003520 ✓
Tel Dodge, Inc.	)	FRN No. 0005003504

To: Office of Managing Director,  
Revenue & Receivables Operations Group

**REQUEST FOR WAIVER OF RULES AND  
REVERSAL OF ASSESSMENT OF  
REGULATORY FEE PENALTIES**

The above-captioned parties hereby respectfully request the Commission's Managing Director to waive all applicable rules and reverse the assessment of penalties imposed against each of them for late payment of annual regulatory fees after September 7, 2005.

In support of this request the following is shown:

1. The attached Certification of John M. Dowdy sets out the factual basis for the relief requested herein. Mr. Dowdy is an owner-principal of each of the captioned parties, which collectively hold licenses for 22 broadcast radio stations. He resides and works in Gulfport, Mississippi, which is located on the Gulf of Mexico, some 65 miles east of the New Orleans. Hurricane Katrina severely damaged Gulfport and the surrounding area on August 28, 2005.

Six of the subject stations are licensed to gulf coast communities and operated from studio-offices in Gulfport. The official FCC mailing address for all 22 stations supervised by Mr. Dowdy is a post office box in Gulfport. Responses from FCC mailings are prepared under Mr. Dowdy's supervision at the Gulfport offices.

2. The parties received FCC Regulatory Fee Notification forms at the Gulfport address,<sup>1</sup> and Mr. Dowdy and his staff had begun preparation of the responses in late August. The due date for payment of the fees was September 7, 2005. Plans were made to send the payments during the week of September 2. However, those plans were rudely interrupted by Katrina, as described in some detail in Mr. Dowdy's Certification. The fee payments were not sent to the FCC until October 28, 2005, after the disruption to operations caused by Katrina had subsided. The Commission, apparently without giving any consideration to the Katrina emergency, determined that the licensees should be assessed penalties for their late filings and sent each of them a "Bill for Collection" on November 21, 2005.<sup>2</sup> Also, on December 23, 2005, the Commission sent one of the parties, Dowdy Partners, a "Notice of Withholding of Action" stating that its application for permission to construct new facilities at WDBN (FM), Wrightsville, Georgia, would not be acted on until the penalty had been paid.

3. The parties hereto respectfully submit that the public interest would be served by grant of this request and reversal of the penalty assessments imposed against them. First, the factual basis supporting this request is overwhelming. The damages suffered by residents in the areas affected by the hurricane are incalculable and the disruptions to their lives were monumental. Mr. Dowdy recites in great detail the efforts he and his employees made to keep

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<sup>1</sup> The form for Southeastern Broadcasting, Inc., may have been sent first to an address in Magnolia, Mississippi, maintained by a different principal of that license, but was forwarded to Gulfport for payment to the FCC before August 29, 2005.

<sup>2</sup> The bill for Southeastern Broadcasting, Inc., was dated December 5, 2005.

their stations operating during the emergency and the difficulties encountered in adequately staffing the stations afterwards. When viewed in light of their extraordinary efforts with a greatly reduced staff, it is hardly surprising that administrative duties such as filing FCC reports were delayed. Second, the Commission itself took official notice of the hurricane damage and took steps to "provide regulatory relief. . .to facilitate the resumption of communications services. ."<sup>3</sup> For example, the Media Bureau extended to November 15, 2005, the deadlines for television stations in the Biloxi-Gulfport market to make elections concerning carriage on cable television systems. See Public Notice DA05-2452, released September 14, 2005. The same bureau extended broadcast station construction permit deadlines for 90 days. Public Notice DA05-2393, released August 31, 2005. The Commission extended for 60 days, until October 31, 2005, the date for certain licensees in Mississippi, Louisiana and Alabama to file regulatory reports on FCC Form 477. Public Notice DA05-4203, released September 1, 2005. The parties hereto actually paid their regulatory fees within the extended time periods set forth in the four Public Notices cited above. However, for some reason not readily apparent, the Commission chose to extend the date for paying broadcast station regulatory fees for only three weeks.<sup>4</sup> Public Notice DA05-2396, released August 31, 2005. While the Commission's disparate treatments of similarly situated parties was almost certainly unintentional and caused by the need to act quickly in the emergency, they are nevertheless arbitrary in the extreme.

5. Clearly, if the parties to this request had been afforded the similar relief provided to others equally affected by the hurricane, no penalties would have been assessed. These parties merely request equal treatment. Moreover, this is not a case where the equities which must be weighed to reach a public interest determination are in near balance. To the contrary, the pre-

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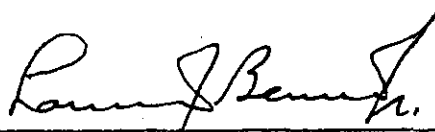
<sup>3</sup> See presentation of Kenneth Moran, Director, FCC Office of Homeland Security, Enforcement Bureau, at the Atlanta meeting of the Commission on September 15, 2005.

<sup>4</sup> Mr. Dowdy did not learn of this action until January of 2006. See Certification, para. 6.

hurricane investment of these licenses in emergency generating equipment and their extraordinary efforts to keep their stations broadcasting public service programming throughout the emergency completely outweigh the minor inconvenience to the Commission's regulatory functions which occurred when the fees were paid 30 days late. Accordingly, the Commission is respectfully requested to immediately waive all its applicable rules, cancel the penalty notices issued to these parties on November 21 and December 5, 2005, and withdraw the Notice of Withholding of Action issued to Dowdy Partners on December 23, 2005.

Respectfully submitted,

GSW, Inc., et al.

by 

Lawrence J. Bernard, Jr.  
4501 Connecticut Avenue, NW  
Suite 315  
Washington, DC 20008  
(202) 249-8700  
Their Attorney

FO WAIVER TRACKING  
CNTL# 6993

Certification of John M. Dowdy

I, John M. Dowdy, under penalty of the laws of perjury, hereby certify the following to be true:

1. I have the primary responsibility for overseeing the operations of 22 radio stations licensed to various communities in Mississippi, Louisiana, Arkansas and Georgia. I live and work in Gulfport, Mississippi, where I also directly supervise the day-to-day operations of the following radio stations licensed to various southern Mississippi communities, which suffered severe hurricane damage in August and September 2005:

WGCM (AM), Gulfport, MS

WGCM (FM), Gulfport, MS

WROA (AM), Gulfport, MS

WZKX (FM), Bay St. Louis, MS

WZNF (FM), Lumberton, MS

WRPM (AM), Poplarville, MS

2. I have had ownership interests in and have worked full-time at radio stations serving the Mississippi gulf coast area for more than 30 years. During that time, I have experienced numerous weather-related emergencies where power failures shut down communications facilities for substantial periods of time. In order to avoid such disruptions and provide continuous service during such emergencies, our stations have invested over \$80,000 in standby power generation equipment. This equipment worked flawlessly during the Katrina emergency. We were able to operate all of our full-time stations continuously throughout the storm and the following weeks while electric service was unavailable.



3. Normally, about 20 employees work full-time at our gulf coast stations. For most of the 30-day period following Katrina, our staff was reduced to about five employees on duty at any one time. The homes five of our staff lived in were totally destroyed and many others were severely damaged; most of our employees had no way to travel to our studio offices due to roads blocked by debris, or downed power lines. During the first weeks of the emergency, several of our employees who did get to the station stayed there 24 hours a day. Three of our staff lived at the offices for more than 70 days. Finding food, water, other supplies and fuel for the generators took hours of my time each day. Employees from our Georgia stations purchased supplies and drove them to Mississippi on a truck. At one point, I made arrangements for the delivery of fuel for the generators with an out-of-town firm, but the truck carrying the fuel was stopped by government authorities who ordered the fuel delivered for emergency use
4. Despite these difficulties, we were able to operate our stations throughout the emergency. Virtually all of our programming was related to the emergency. We used our remote broadcast equipment and cell phones to stay in contact with all levels of government, including civil defense, FEMA, police and firefighting agencies; and officials of these agencies broadcast live programming over our stations on numerous occasions.
5. I personally review all correspondence from the FCC to the 22 stations under my supervision, and personally review and sign all of our responses to the agency. The official mailing address maintained by the FCC for correspondence to these stations is P.O. Box 2639, Gulfport, Mississippi 39505. Before the hurricane, the FCC sent Regulatory Fee Notification forms for the stations to that address. The FCC's deadline for paying the fees set forth in the forms was September 7, 2005.

My staff and I worked on preparing the responses to the FCC's notices in late August and were finishing these tasks before Hurricane Katrina hit on August 28, 2005. However, as related above, dealing with the aftermath of Katrina became more than a full-time job for me and our greatly reduced staff. All of our efforts were devoted to keeping the stations operating and normal administrative tasks were necessarily curtailed.

6. When normal day-to-day operations of the stations resumed in late October of 2005, I found the partially completed FCC Regulatory Fee forms in my office, completed them and sent them together with checks in payment of the fees to the FCC on October 28, 2005. I was not informed until January of 2006 that the FCC had released a Public Notice on August 31, 2005, extending the regulatory fee filing date for some stations in Louisiana, Mississippi and Alabama for three weeks, until September 28, 2005.
6. In late November of 2005, I received 12 bills from the FCC totaling \$9,530.00 for penalties for "late regulatory fee payment not received by 09/07/05." In addition, in early January of 2006, I received from the FCC a "Notice of Withholding of Action", informing me that action on an application for FCC permission to construct new facilities at one of my Georgia stations would be withheld until the penalty for the late regulatory fee had been paid.
7. While assessment of penalties for late payments might be justified in other cases, I respectfully submit that the severity of the damages caused by the hurricane, the difficulties we encountered in just keeping our stations operating for several months and the extraordinary service to the public we delivered in that period, demonstrate beyond doubt that our stations deserve to be commended rather than

penalized for our efforts during the months following Katrina. Thus, in my view, there is ample justification for waiving the Commission's rules and withdrawing the notices of penalty described above.

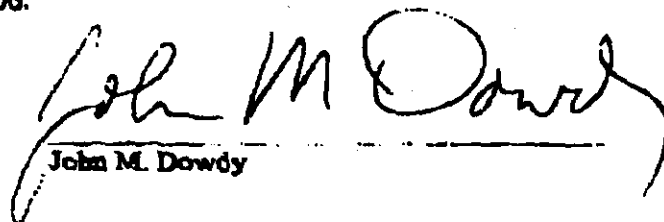
Signed and dated this \_\_\_\_\_ day of January 2006.

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John M. Dowdy

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Signed and dated this 23<sup>d</sup> day of January 2006.

  
John M. Dowdy



## Red Light Display System

[FCC](#) > [Fees](#) > Red Light Display System

Logged in as: (0000000505) [[Log Out](#)]

[Admin](#) | [Print](#) | [H](#)

3/1/2006 3:08 PM

### Current Status of FRN 0003732260

**STATUS: Green**

**You have no delinquent bills which would restrict you from doing business with the FCC.**

The Red Light Display System checks all FRNs associated with the same Taxpayer Identification Number (TIN). A green light means that there are no outstanding delinquent non-tax debts owed to the Commission by any FRN associated with the requestor's TIN.

The Red Light Display System was last updated on 03/01/2006 at 9:20 AM; it is updated twice each business day at about 9 a.m. and 7 p.m., ET.

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#### Customer Service

[Red Light Help](#)

[FCC Debt Collection](#)

[FCC Fees](#)

[FCC Web Policies](#)

**Red Light Display System Help Line: (877) 480-3201, option 4, 4 (Mon.-Fri. 8 a.m.-6:00 p.m. ET)**

Red Light Display System has a dedicated staff of customer service representatives standing by to answer your questions or concerns. You can email us at [arinquies@fcc.gov](mailto:arinquies@fcc.gov) or fax us at (202) 418-7869.

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

Adana

FILE

DE OF  
AGING DIRECTOR

February 24, 2006

FO WAIVER TRACKING  
CNTL# 6993

DUE DATE: 3/21

Lawrence J. Bernard, Jr., Esquire  
4501 Connecticut Avenue, NW  
Suite 315  
Washington, DC 20008

Re: Request for Waiver of Rules &  
Reversal of Assessment of Reg. Fee  
Penalties From: GSW, Inc., JMD, Inc.,  
MAC Partners, Dowdy Partners,  
Harrison Radio Stations, Inc.,  
John M. Dowdy, Mountain Home Radio  
Stations, Inc., San Dow Broadcasting,  
Inc., Southeastern Broadcasting, Inc.,  
State Broadcasting, Inc. & Tel Dodge,  
Inc.

Dear Counsel:

This letter is acknowledging receipt of your letter dated February 8, 2006, which was received by the FCC on February 8, 2006. Within 30 days of this letter we will mail you either a resolution to your item or a letter telling you when you can expect a resolution. If you have any questions concerning this letter please call the Office of the Chief Financial Officer at (202) 418-1925. As you may notice from the date your correspondence was actually received in our office, we continue to experience significant delays in mail delivery. You may choose to fax or email any further correspondence to the Agency for a more timely response.

Sincerely

  
Mark A. Reger  
Chief Financial Officer

RECEIVED & INSPECTED

FEB - 8 2006

FD WAIVER TRACKING  
CNTL# 6993

Before the

FCC - MAILROOM

FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of

GSW, Inc.	)	FRN No. 0005003553
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MAC Partners	)	FRN No. 0005003488
Dowdy & Dowdy Partnership	)	FRN No. 0004073128
Dowdy Partners	)	FRN No. 0005003538
Harrison Radio Stations, Inc.	)	FRN No. 0005003546
John M. Dowdy	)	FRN No. 0005008131
Mountain Home Radio Stations, Inc.	)	FRN No. 0005003470
San Dow Broadcasting, Inc.	)	FRN No. 0005003579
Southeastern Broadcasting, Inc.	)	FRN No. 0013324210
State Broadcasting, Inc.	)	FRN No. 0005003520
Tel Dodge, Inc.	)	FRN No. 0005003504

To: Office of Managing Director,  
Revenue & Receivables Operations Group

**REQUEST FOR WAIVER OF RULES AND  
REVERSAL OF ASSESSMENT OF  
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